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ON PETITION

In re Patent No. 6,689,766 :
Issue Date: February 10, 2004 :
Application No. 10/035,211 :
Filed: June 4, 2001 :
Attorney Docket No. Q67008 :

This is a decision on the petition filed May 4, 2004, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/JP99/05826, filed October 22, 1999).

The petition is **dismissed** as moot for the reasons stated below.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

37 CFR 1.78(a)(2)(ii)¹ indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; and (3) **a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 363 before November 29, 2000.**

Since nonprovisional application no. 09/830,167 is the national stage entry of an international application filed prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(3) for acceptance of a late claim for priority do not apply. Accordingly, the petition is dismissed as involving a moot issue.

As set forth in MPEP 1893.03(c), page 1800-199, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371. Therefore, the petition is


¹ 37 CFR 1.78(a)(2) was amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(2)(iv) for clarity. *See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications*, 66 FR 67087 (December 28, 2001); 1254 *Off. Gaz. Pat. Office*, 121 (January 22, 2002) (final rule).

dismissed as moot and a Certificate of Correction will not be issued.

In view of the dismissal of the instant petition as moot, the \$1,330.00 petition fee and the \$100.00 Certificate of Correction fee submitted on May 4, 2004 are unnecessary. Accordingly, as authorized, these fee will be refunded to Deposit Account No. 19-4880 in due course.

A corrected Filing Receipt which reflects that prior-filed Application No. 09/830,167 is the national stage entry of PCT Application No. PCT/JP99/05826 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Petitions Attorney E. Shirene Willis at (571) 272-3230.


Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt